

(2016) 11 DEL CK 0124

In the Delhi High Court

Case No : Bail Appln. No. 1608 of 2016

Anuradha Chaudhary

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 04-11-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 120B, Section 406, Section 420, Section 467,
Section 468, Section 471, Section 477A

Citation : (2017) 236 DLT 14

Hon'ble Judges : Mr. Vipin Sanghi, J.

Bench : Single Bench

Advocate : Mr. Rattan Singh, Mr. Manish Chaudhary, Mr. Arjun Chaudhary, Ms. Abhilasha Singh, Mr. Abhishek Iyer, Ms. Aishwarya Tiwari and Mr. Nishank Tyagi, Advocates, for the Petitioner; Mr. Ashish Dutta, APP along with Inspector Sanjeev, PS - Jyoti Nagar and Mr. Sh

Final Decision : Dismissed

Judgement

Vipin Sanghi, J. - The present bail application is preferred by the petitioner to seek anticipatory bail under section 438 Cr.P.C., apprehending arrest in case FIR No.672/2015 registered at Police Station ? Jyoti Nagar, New Delhi, under Section 420/ 406/ 467/ 468/ 471/ 477-A/ 120-B IPC, wherein the applicant is one of the four accused.

2. Here itself I may observe that accused Nos. 1, 2 & 3 have been granted anticipatory bail by the learned ASJ, Shahdara District, Karkardooma Courts. However, the petitioner has been denied the said protection.

3. The said FIR came to be registered on the complaint of one Sh. Vikas Bhardwaj. The case of the complainant/ prosecution is that on the proposal of one Devender Sharma ? in association with three other accused persons, he consented to purchase property bearing No. A-37, Kailash Nagar Colony, Loni Road, Shahdara, Delhi. He issued four cheques ? two from his own account and

two from the account of his brother Akash Bhardwaj in the name of M/s. Capital Land Builders Pvt. Ltd. Two of these cheques were encashed in the account of M/s. Capital Land Builders Pvt. Ltd., while the other two were returned against payment in cash. The complainant produced one receipt in respect of the amount of Rs.20 Lakhs paid in cash, issued by the petitioner accused Anuradha Chaudhary. In respect of the other returned cheque, the complainant claims that he handed over Rs.20 Lakhs in cash to Devender Sharma, against which no receipt was issued.

4. The complainant also claimed that he transferred his flat admeasuring 105 square yards situated on 3rd Floor of Building No.66, Gali No.8, Balbir Nagar Extension, Shahdara, valued at Rs.50 Lakhs, as part consideration for purchase of property bearing No. A-37, Kailash Nagar Colony, Loni Road, Shahdara, Delhi. The total consideration for the said plot was Rs.1 Crore 30 Lakhs. The complainant claims in his complaint that the petitioner accused Smt. Anuradha Chaudhary executed the sale deed dated 03.04.2014 in association with the other accused in respect of A-37, Kailash Nagar Colony, Loni Road, Shahdara, Delhi, wherein the sale consideration disclosed was Rs.40 Lakhs. The petitioner represented that she is the owner of the said property and that the property was her self-acquired property without any other claim over the same. The accused also sought to produce a resolution of M/s. Capital Land Builders Pvt. Ltd., purportedly resolving to sell the said property and authorizing the petitioner to sell the same on behalf of the company. The petitioner was purportedly shown as a director of the said company. The case of the prosecution is that the applicant had no authority to sell the said property on behalf of M/s. Capital Land Builders Pvt. Ltd. and that she was not even a director of the said company.

5. The anticipatory bail application preferred by the petitioner was dismissed by the Trial Court on 28.07.2016. The submission of the petitioner that she is a woman; that the dispute raised was civil in nature; and that the appointment of the petitioner as a Director of M/s. Capital Land Builders Pvt. Ltd. was not communicated to the Registrar of Companies on account of inter-se dispute between shareholders/ directors of M/s. Capital Land Builders Pvt. Ltd., were rejected by the learned ASJ. The fact that the other accused have also been granted anticipatory bail was not considered as a relevant fact qua the case of the petitioner. It was argued on behalf of the State, as well as the complainant, that there was a stay order operating since 2006 against alienation of the said property granted by the Delhi High Court? to the knowledge of the petitioner accused, yet the complainant was persuaded to purchase the said property from the petitioner. Moreover, the petitioner was never appointed as a Director of M/s. Capital Land Builders Pvt. Ltd. and yet she claimed herself to be a Director while executing the sale deed in favour of the complainant on 03.04.2014.

6. The learned ASJ also took into account the fact that there were rival groups in the company M/s. Capital Land Builders Pvt. Ltd., who were claiming ownership and control. One group, including the applicant had executed the sale deed in

favour of the complainant in respect of the aforesaid property.

7. The learned ASJ also took notice of the fact that a Division Bench of this Court had passed an order on 06.11.2009 in FAO(OS) No.337/2009 restraining the respondent in the said appeal ? which included the husband of the petitioner herein Ajay Chaudhary, from representing themselves as shareholders or Directors of M/s. Capital Land Builders Pvt. Ltd. and from acting on behalf of the said company. The restraint also covered use of any letterhead and bank account of the company M/s. Capital Land Builders Pvt. Ltd., and against dealing with the assets of the said company in any manner whatsoever, and from filing any statutory forms or returns of M/s. Capital Land Builders Pvt. Ltd. Undisputedly, even according to the applicant, it was the company M/s. Capital Land Builders Pvt. Ltd., which was the owner of the property A-37, Kailash Nagar Colony, Loni Road, Shahdara, Delhi, which was purportedly sold to the complainant ostensibly for Rs.40 Lakhs, as disclosed in the sale deed, and the applicant was the sole beneficiary under the sale deed, which she executed claiming herself to be a Director of M/s. Capital Land Builders Pvt. Ltd. Since the role of the applicant was more central and grave, her case was distinguished from that of the other accused, who were granted anticipatory bail.

8. The learned ASJ also observed that the applicant could not explain as to how she claimed herself to be a Director of M/s. Capital Land Builders Pvt. Ltd. in spite of the fact that the stay order passed by the Division Bench of this Court was operating and the Special Leave Petition preferred before the Supreme Court against the order of the Division Bench was also dismissed. The other accused Devender Sharma, Sushil Luthra & Darshan Singh played the role of introducers and persuaders, who persuaded the complainant to enter into the transaction with the petitioner claiming herself to be a Director of M/s. Capital Land Builders Pvt. Ltd. It was the applicant, who was the signatory to the sale deed claiming herself to be Director of M/s. Capital Land Builders Pvt. Ltd.

9. The submission of learned counsel for the petitioner, firstly, is that the applicant is a woman. She is ready & willing to join the investigation. He submits that under the sale deed, in clause 9, the vendor indemnified the vendee, namely the complainant, against any and all losses, damage, cost and expenses, which may be incurred or suffered by the vendee on account of the representation ? that the said property is free from any or all and every sorts of encumbrances such as Sale, transfer, gift, mortgage, charges, liens, claims, demands, liabilities, surety, security, notice, legal dispute, litigation, decree and flaws any stay from any Court, attachment, inferences any prior sale agreement. Thus, the submission is that there was no intention to cheat the complainant since the petitioner had indemnified the complainant and the said indemnity can be enforced.

10. In support of the said submission, He has placed reliance on Smt. Dropti Narang & Another v. State NCT of Delhi & Another, CrI.M.C. No.2483/2007 decided by this Court on 20.12.2008. In the said case as well a similar clause

existed in the sale deed, and while interpreting the same, this Court observed:

"The said clause clearly disclose the remedy of indemnification in full or part of loss sustained, by the petitioner, with all costs and damages in the event of the respondent being deprived of the property, which is the subject matter of the agreement. Thus, clearly, the parties agreed for civil remedy instead of criminal remedy."

11. He submits that the complainant has already preferred a civil suit, which is pending, and thus, the dispute raised is purely a civil dispute. Mr. Rattan Singh submits that the orders obtained by the other faction in respect of the disputes between the petitioner M/s. Capital Land Builders Pvt. Ltd. were obtained as a result of fraud being perpetrated upon the Court and the said orders were non-est. He submits that this Court should call for a status report by the State on the aspect whether the shareholding of M/s. Capital Land Builders Pvt. Ltd. has been transferred by the petitioner and her group to others ? who have staked claim over the shareholding of M/s. Capital Land Builders Pvt. Ltd.

12. He has also referred to the judgment in A.V. Papayya Sastry & Others v. Government of A.P. & Others, (2007) 4 SCC 221, wherein the Supreme Court observed in paragraphs 38 & 39 as follows :

"38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent court of law after hearing the parties and an order is passed in favour of the plaintiff applicant which is upheld by all the courts including the final court. Let us also think of a case where this Court does not dismiss special leave petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order.

39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as a nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every court, superior or inferior."

13. Mr. Rattan Singh has also relied upon Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited & Others, (2013) 5 SCC 397, to submit that transfer of a property pendente lite is not void ab-initio and that the purchaser of any such property takes the bargain subject to the rights of the

complainant in the pending suit. The Supreme Court held that where a sale deed is executed in breach of injunction issued by a competent Court, the breach of any such injunction does not render the transfer ineffective. The party committing the breach may, doubtless, incur the liability to be punished for the breach committed by it, but the sale by itself remains valid as between the parties to the transaction subject to any directions which the competent Court may issue in the suit against the vendor.

14. Mr. Rattan Singh submits that since the petitioner owns up the sale transaction and the facts are not in dispute, the custodial interrogation of the petitioner is not necessary in the present case.

15. On the other hand, the application is opposed by the State as well as by the complainant. It is pointed out that the applicant had clearly misrepresented and she had cheated the complainant inasmuch, as, the applicant claimed herself to be a Director of M/s. Capital Land Builders Pvt. Ltd. duly authorised to sell the said property to the complainant. On 06.10.2006, an order of injunction was passed in C.S.(O.S.) No.1906/2006 restraining the defendants in the suit from representing themselves as the shareholders/ representatives of the plaintiff company, namely M/s. Capital Land Builders Pvt. Ltd., which order of injunction continued to operate even when the sale deed in question was executed by the applicant. The defendants in the suit were the persons from the group of the applicant.

16. It is submitted that the applicant had provided the board resolution dated 30.04.2013 and the minutes of meeting dated 29.04.2013 purportedly of M/s. Capital Land Builders Pvt. Ltd. at the time of getting the sale deed registered in the name of the complainant, both of which are forged and fabricated documents since neither the applicant, nor Braham Arneja, were the Directors of M/s. Capital Land Builders Pvt. Ltd. on the relevant date. Thus, there was no question of the applicant being authorised to execute the sale deed of the property in question in favour of the complainant.

17. It is also pointed out that the applicant was well-aware of the injunction order passed against her group inasmuch, as, she herself represented the contemnors as an advocate in the contempt proceedings initiated on account of breach of the order of injunction dated 06.10.2006 passed in C.S.(O.S.) No.1906/2006. Though, the applicant is a lady, she is well educated and aware of her rights and liabilities and consciously proceeded to cheat the complainant by forging documents and by using forged documents for the said purpose.

18. Having heard learned counsel for the petitioner, the learned APP as well as learned counsel for the complainant, I am of the view that the applicant is not entitled to protection against arrest in the facts of the present case. The decisions relied upon by Mr. Rattan Singh have to be read in the context and the factual background in which they were delivered.

19. In the particular facts of the case in Smt. Dropti Narang (supra), the Court

returned the finding that it was "not easily believable that the respondent/complainant was not aware of the fact that the property under sale was not lying mortgaged with the HDFC Bank. Another noticeable feature in the present case is that even the buyer had applied for a loan with Birla Home Finance Ltd. of Rs.2 crores and certainly if under the agreement to sell the fact of the property lying under mortgage was disclosed then the same could have created a hindrance in the way of the respondent/complainant to obtain his loan amount of Rs.2 crores from Birla Home Finance Ltd. It also cannot be denied that at the time of the execution of the sale deed the complainant would have certainly insisted upon the petitioner to deliver the original documents and in the absence of the same again the deal could not have been finally materialized. It is further not in dispute that the petitioner had taken a loan amount of Rs.32 lakhs from the HDFC Bank which amount could have been easily paid by the petitioner from the sale price of the suit property. It would be thus manifest that the petitioner would not have gained any advantage in suppressing the fact of said property lying mortgaged with HDFC Bank on the date of execution of the agreement to sell".

20. It was in this background that the Court interpreted the contractual clause in the agreement ? which, firstly, contained a declaration that the property was free from all sorts of encumbrances, burden, decree, mortgage, etc. and thereafter contained an indemnity bond by the vendor, to mean that the parties agreed for civil remedy instead of criminal remedy in the event of the declaration being found to be untrue.

21. In the present case, there is no such circumstance brought on record by the petitioner to show that the complainant was aware of the fact that the petitioner was not a Director of M/s. Capital Land Builders Pvt. Ltd., or that she was not authorised to deal with the said property of M/s. Capital Land Builders Pvt. Ltd., or that the complainant was aware of the order of injunction operating against the sale of the property of M/s. Capital Land Builders Pvt. Ltd. The said decision, therefore, has no application in the facts of this case.

22. The decision in A.V. Papayya Sastry (supra) also has no application in the facts of this case. Whether, or not, the injunction obtained by the other faction of M/s. Capital Land Builders Pvt. Ltd. was a result of fraud, is not the subject matter of investigation in the present case.

23. In the present case, what is under examination is whether the petitioner accused had misrepresented to the complainant with regard to her right and capacity to execute the sale deed in favour of the complainant in respect of the aforesaid property for and on behalf of the M/s. Capital Land Builders Pvt. Ltd. as its Director, and whether the applicant has used forged and fabricated documents so as to cheat the complainant. There is no finding returned by any Court that a fraud had been played upon the Court for upon the defendants in C.S.(O.S.) No. 1906/2006, which resulted in passing of the order dated 06.10.2006.

24. The decision in Thomson Press (India) Limited (supra) is also of no avail since the issue in the present case is not whether the sale deed executed by the petitioner accused in favour of the complainant is null & void. As noticed herein above, the issue is whether the petitioner has used forged and fabricated documents with a view to induce the complainant to accept the sale of the said property for valuable consideration. Pertinently, in Thomson Press (India) Limited (supra), the vendee accepted the sale being conscious of the injunction operating against the sale of the property in question.

25. The fact that the petitioner is a woman is, no doubt, a relevant consideration to consider her prayer for grant of anticipatory bail. However, the law does not provide for protection against arrest of lady irrespective of other circumstances. The petitioner appears to be a young woman conscious of her rights and liabilities as she is herself a qualified lawyer. Thus, she acted knowing full well as to what the consequence of her action could be. By her professional qualification and experience, she would be seasoned enough to face custodial interrogation. The custodial interrogation of the petitioner, in my view, is necessary to unearth the conspiracy, if any, in relation to the forgery and fabrication of the board resolution and the minutes of the meeting of M/s. Capital Land Builders Pvt. Ltd. produced by the applicant at the time of registration of sale deed in favour of the complainant.

26. For all the aforesaid reasons, the application is dismissed.